

REMARKS

In response to the Office Action mailed November 4, 2005, Applicants respectfully request reconsideration. To further the prosecution of this Application, Applicants submit the following remarks, and have added a new claims. The claims as now presented are believed to be in allowable condition. Claim 35 has been added. Claims 1-35 are pending in this Application.

Preliminary Matters

The Examiner issued a Final Rejection on November 4, 2005, which Applicants respectfully suggest is inappropriate at this time. Applicants respectfully submit that an RCE and preliminary amendment were filed on August 4, 2005. The amendment added limitations to several claims (1, 11, 20 and 21) and added new claims (27-34). The final rejection cited art not mentioned previously (e.g., U.S. Patent No. 6611872 to McCanne). Given the changes to the existing claims as well as the addition of new claims, and the rejection citing art not previously used to reject the claims, the final rejection on a First Action is improper and should not have been made. Applicants request that the finality of the rejection of November 4, 2005 be withdrawn.

Further, the Examiner stated that the changes to the existing claims were not accorded any patentable weight. Applicants respectfully disagree with the Examiner's statement. The Examiner is directed to MPEP section 2111.02 titled PREAMBLE STATEMENTS LIMITING STRUCTURE, which states any terminology in the preamble that limits the structure of the claimed invention **MUST** be treated as a claim limitation (emphasis added). For example, in the present application, claim 1 was amended to further recite that the method is a method of "distributing data in an overlay network based in logical relationships" and further that the "overlay network implemented as an abstraction on top of an existing network based on other connections". Therefore the method is intentionally limited to distributing data in an overlay network and that the overlay network is implemented as an abstraction on top of an existing network

based on other connections. Since the method is clearly being limited by the amendment to the preamble, this limitation **must** be given patentable weight.

Rejections under §102

Claims 1-3, 7, 8, 10-13, 17, 18, 20-22 and 24 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,438,596 to Ueno et al. (hereinafter Ueno). Ueno discloses a video on demand system wherein the video delivery to the set-top unit is dynamically controlled by selecting a video stream from a video server or from a storage unit of a head-end, as shown in Figure 2 and as described at column 10, lines 24-35. As discussed with the Examiner, the Ueno reference includes a video server which arguably corresponds to the provider node of the present application, a cached node or network cache (head-end) which arguably corresponds to the transferring node of the present application, and a user (set-top unit) which arguably corresponds to the child node of the present application.

In contrast to Ueno, claim 1 recites that the transferring node is part of an overlay network based on logical relationships, the overlay network including a hierarchical network of nodes, the overlay network implementing an abstraction on top of an existing network based on other connections. Ueno fails to disclose or suggest an overlay network based on logical relationships or that the overlay network is implemented as an abstraction over an existing network based on other connections. Accordingly, amended claim 1 is believed allowable over Ueno.

Claims 11, 20 and 21 recite similar language, and are therefore believed allowable over Ueno for the same reasons. Claims 2, 3, 7, 8, 10, 12, 13, 17, 18, 22 and 25-26 depend from claims 1, 11 20 or 21 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 1-3, 7, 8, 10-13, 17, 18, 20-22 and 24 under 35 U.S.C. §102(e) as being anticipated by Ueno is believed to have been overcome.

Rejections under §103

Claims 5, 6, 15 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ueno in view of U.S. Patent No. 6,496,520 to Acosta (hereinafter Acosta). Claims 5, 6, 15 and 16 depend from claims 1 or 11 and are believed allowable as they depend from a base claim which is believed allowable. Claims 23, 25 and 26 –34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ueno in view of U.S. Patent No. 6611872 to McCanne (hereinafter McCanne). Claims 23, 25 and 26-34 depend from claims 1, 11 or 20 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 5, 6, 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over Ueno in view of Acosta; and the rejection of claims 23, 25 and 26-34 under 35 U.S.C. §103(a) as being unpatentable over Ueno in view of McCanne is believed to have been overcome.

Claim 35 has been added. Support for claim 35 can be found in the specification at page 4, line 24 through page 5, line 20 and further at page 24, line 4 through page 25 line 21. Applicants submit that no new matter has been added by the addition of claim 35. None of the prior art of record disclose or suggest the method for distributing data recited by claim 35.

Conclusion


In view of the above, the Examiner's rejections are believed to have been overcome, placing claims 1-35 in condition for allowance, and reconsideration and allowance thereof is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

Applicants hereby petition for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

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If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



David W. Rouille, Esq.
Attorney for Applicant(s)
Registration No.: 40,150
CHAPIN & HUANG, L.L.C.
Westborough Office Park
1700 West Park Drive
Westborough, Massachusetts 01581
Telephone: (508) 366-9600
Facsimile: (508) 616-9805

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